



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

June 28, 2000

Minutes of the June 14, 2000, meeting of the Commission on Governmental Ethics and Election Practices held in the Maine Labor Relations Board Hearing Room, PUC Building, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter (telephonically), Hon. Virginia Constantine, Ms. Linda W. Cronkhite, and Hon. Harriet P. Henry; Director William C. Hain, III; Counsel Phyllis Gardiner; and Commission Assistant Diana True.

Chairman Webster called the meeting to order at 9:06 a.m.

In keeping with its practice of addressing agenda items to accommodate those personally present first, the Commission considered items on the published agenda as follows:

Agenda Item #5: Representative David A. Trahan: Representative Trahan addressed the Commission regarding the background of Chapter 133 of the Maine Resolves approved by the Governor on May 18, 2000, directing the Commission on Governmental Ethics and Election Practices to adopt rules regulating push polling. Representative Trahan noted that he had sponsored the Resolve that had been a compromise position within the Legislature to a bill originally introduced by Senator Richard Bennett to regulate the practice of push-polling during political campaigns. Representative Trahan noted the Legislature's view that "push-polling" has been a practice used in an unethical manner, that the Legislature had tried to address the problem within the legislative process, but that they had been unsuccessful in that regard. The Commission was considered an appropriate body to consider addressing the problem because of the Commission's nonpartisan nature.

Judge Henry and others questioned the appropriateness of using the administrative rulemaking process as a substitute for an unsuccessful legislative attempt to address the problem, and inquired whether the courts might not find the matter to be a legislative responsibility rather than an attempt to address the problem through the administrative rulemaking process.

Chairman Webster thanked Representative Trahan for his presentation and assured him that the Commission would do its best to fulfill the direction from the Legislature. The Chairman also requested Commission Counsel to begin to explore the legal issues associated with "push-polling" as a political telemarketing technique, including any legal and constitutional issues that may be associated with the regulation of such conduct.

Agenda Item #3: Leadership Political Action Committees (PACs): This issue was tabled from the May meeting to solicit information from interested parties in the political process. The matter arose as a result of a request from a Legislator for advice regarding the propriety of a Maine Clean Election Act (MCEA) certified candidate also being permitted to be associated with

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a so-called "leadership PAC" for the purpose of that candidate supporting the election efforts of other, nonparticipating candidates for the Legislature. Attorney Kurt W. Adams appeared on behalf of the Maine Democratic Party and made an oral presentation accompanied by his written analysis of the law, concluding that Maine law does not prohibit a Clean Election Act candidate from also maintaining a "leadership PAC" for the reasons stated in his letter. He relied largely on the interpretation and application of the term "accept" as it relates to the acceptance and use of contributions to a Clean Election Act candidate's campaign as compared to "accepting" contributions to a completely separate PAC.

Chairman Webster inquired about the requirement for the Clean Election Act candidate to limit his or her political activities to those paid for by the Clean Election Fund, while Ms. Constantine drew the parallel between contributions to the party as contributions to that party's platform, noting a distinction between what may be illegal versus unethical.

Senator Susan W. Longley addressed the Commission and noted the difference between what the letter of the law requires versus what the spirit of the law may permit. She concluded with her opinion that a candidate's decision regarding association with a leadership PAC is not forbidden by either the campaign finance statutes or the Maine Clean Election Act, but that it may be politically imprudent for that candidate to be associate with such a PAC because of the "political" consequences that may result if the constituents of that candidate believe that such association violates the spirit of the Clean Election Act. That, however, should be the decision of the candidate, she suggested, not of the Commission by interpretation of the law that does not technically prohibit such action.

Representative Thomas W. Murphy, Jr., House Minority Leader, addressed the Commission regarding the bipartisan approach that the Legislature has sought to pursue regarding proposed amendments to the Maine Clean Election Act during this past Legislature. He noted that where the Clean Election Act is silent on a matter, the action should not be permitted. Chairman Webster inquired about the difference between a "leadership race" versus a "legislative race," noting that a leadership PAC may benefit a candidate's legislative race, depending upon how that PAC spends its funds.

Representative Murphy suggested that leadership PACs could be audited to ensure that their expenditures are proper and not beneficial to any Clean Election Act candidate in violation of the Act. He noted that, on one hand, MCEA candidates are insulated from fundraising by being permitted only to accept public money from the Clean Election Fund, while, on the other hand, those same MCEA candidates may be able to "shake down" lobbyists for nonpublic money by using a so-called "leadership PACs." He suggested that the Maine Clean Election Act does not give permission for a MCEA candidate to form a "leadership PAC" because the Act is silent on the matter and, therefore, the Commission should prohibit MCEA candidates from being associated with "leadership PACs."

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Attorney Adams noted that the Act provides certain restrictions on what a MCEA candidate may and may not do. The law is crafted around what happens when the candidate does or does not do any of those things. The fact that a political action committee does not do anything to benefit the MCEA candidate who may be associated with it in any way that would help that candidate get elected to the Legislature in violation of the MCEA should persuade the Commission to permit MCEA candidates to associate with so-called "leadership PACs."

Counsel Gardiner offered to provide a written opinion considering the arguments presented at this meeting, as well as the written presentations by Attorney Adams and Attorney John Brautigam, Executive Director of Maine Citizens for Clean Elections, whose letter on this matter dated June 8, 2000 was received, but who could not be present for the instant discussion. Chairman Webster requested that Counsel Gardiner's opinion be prepared in sufficient time to permit consideration and final resolution of this matter at the next Commission meeting in July.

Chairman Webster expressed appreciation, on behalf of the Commission, for the contributions to the discussion offered by Senator Longley, Representative Murphy, Attorney Adams, and all others providing information for the Commission's consideration on this important matter.

Agenda Items #4A & #4B: Christine Burke, Esq. And Richard Trahey, Late Lobbyist Disclosure Penalties: Lobbyist Burke, lobbyist for nine (9) employers, and Lobbyist Trahey, lobbyist for one (1) employer, submitted April 2000 disclosure reports two (2) days late due to problems associated with computer equipment as related to the Commission in Ms. Burke's letter of May 18, 2000. Mr. Trahey is a lobbyist in Ms. Burke's firm, Maine Tomorrow. Ms. Burke addressed the Commission and more fully explained the circumstances surrounding the computer problems related in her letter. Mr. Carpenter questioned why the text of the letter submitted by Mr. D. Vincent McLaughlin, Executive Director of the Maine Council of Self-Insurers, dated May 22, 2000, was virtually identical to the text of Ms. Burke's letter. She explained that Mr. McLaughlin paid for the use of her company's computer equipment for his business and that the same computer malfunction that resulted in her late reports also caused the delay in submission of his reports, and that she had shared a copy of the letter that she had sent to the Commission with Mr. McLaughlin. She expressed regret that the text of her letter had been submitted virtually unaltered by Mr. McLaughlin.

After discussion of the staff recommendation regarding the assessment of a single penalty based on a single act of lateness (even though for nine (9) employers), Ms. Cronkhite moved, Ms. Constantine seconded, and Members voted unanimously to assess a \$100 penalty against Ms. Burke and a \$100 penalty against Mr. Trahey for the late submission of their April lobbyist disclosure reports.

Agenda Item #1: Ratification of Minutes: Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to approve the minutes of the May 10, 2000, meeting, as distributed.

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Agenda Item #2: Representative Roger D. Frechette: Mr. Hain reviewed the background of the late submission by Representative Frechette of his Statement of Sources of Income and Liabilities that was due on February 15, 2000, but not filed with the Commission until March 31, 2000, the assessment at the May meeting of a \$500 penalty for the late submission of that report, and the subsequent request by Representative Frechette for reconsideration by the Commission of the assessed penalty of \$500, suggesting \$250 as a more appropriate penalty. No motion for reconsideration was offered and, consequently, the Commission's penalty assessment of \$500 remained unchanged. Ms. Constantine noted that neither the assessment of the original penalty, nor the failure of the Commission to reconsider the matter at this meeting resulted in any way from Representative Frechette's absence from the proceedings, but rather because he filed his report late in a manner that the Commission determined warranted the assessment of a penalty in the magnitude determined.

Agenda Item #4C: Patricia S. Philbrook, RNC, NP, Lobbyist for Maine State Nurses Association: Ms. Philbrook requested a Commission determination of the penalty for the 2-day late filing of her April lobbyist disclosure report based on the explanation provided in her letter dated May 18, 2000. After brief discussion of the contents of that letter, Ms. Constantine moved, Ms. Cronkhite seconded, and Members voted unanimously to assess a penalty of \$100 for the late filing of Ms. Philbrook's April lobbyist disclosure report.

Agenda Item #4D: D. Vincent McLaughlin, Lobbyist for Maine Council of Self-Insurers: Mr. McLaughlin requested a Commission determination of the penalty for the 2-day late filing of his April lobbyist disclosure report based on the explanation provided in his letter dated May 22, 2000. Mr. Carpenter reiterated his displeasure with the verbatim duplication of the letter submitted by Ms. Burke, following which Ms. Cronkhite moved, Ms. Constantine seconded, and Members voted unanimously to assess a penalty of \$100 for the late filing of Mr. McLaughlin's April lobbyist disclosure report.

Agenda Item #4E: Douglas S. Carr, Esq., Lobbyist for Oakhurst Dairy & Rite Aid Corporation: Mr. Carr requested a Commission determination of the penalty for the 1-day late filing of his April lobbyist disclosure report for two (2) employers based on the explanation provided in his letter dated May 23, 2000. Following brief discussion, Judge Henry moved, Ms. Constantine seconded, and Members voted unanimously to assess a penalty of \$100 for the late filing of Mr. Carr's April lobbyist disclosure reports as a violation by a single act involving two (2) employers.

Agenda Item #5: Conflict of Interest Article: Mr. Carpenter inquired about the staff's knowledge of an item that had appeared in the op-ed section of the Bangor Daily News involving alleged conflict of interest issues associated with Representative Joseph Bruno. He inquired whether anyone had raised the issue with the Commission and what the Commission's practice has been regarding raising an issue such as this on the Commission's own motion. Mr. Hain reviewed his knowledge of the press inquiries about Representative Bruno in the context of a larger story that had been published regarding Maine's reporting requirements for sources of

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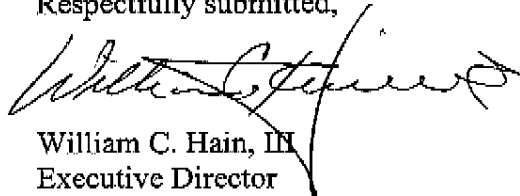
income information from Legislators and the potential for conflicts of interest that may arise whenever a state has what is called a "citizen's legislature," as does Maine. Mr. Carpenter requested that materials regarding this subject be prepared and distributed before the next meeting and that this item be included on the next agenda for further discussion.

National Institute on Money in State Politics Request: Mr. Hain requested and was granted authority to photocopy and send to the Institute the campaign finance reports for primary election candidates in order for the Institute to keypunch the data into their database to be made available to the public. The Institute will not charge the Commission for that service and will provide the resulting data on computer disk at no charge for use in the Commission's electronic filing database.

COGEL Conference: Members briefly discussed the annual COGEL Conference in early December 2000 in Tampa, Florida and determined that three (3) Members are tentatively interested in attending if their schedules permit.

There being no further business, on motion and unanimous vote, the Commission adjourned at 11:03 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Hain, III", is written over the typed name and title.

William C. Hain, III  
Executive Director